EXPLANATORY MEMORANDUM TO

THE VALUE ADDED TAX (PLACE OF SUPPLY OF SERVICES) (SUPPLIES OF ELECTRONIC, TELECOMMUNICATION AND BROADCASTING SERVICES) ORDER 2018

2018 No. 1194

1. Introduction

1.1 This explanatory memorandum has been prepared by Her Majesty's Revenue and Customs ("HMRC") on behalf of Her Majesty's Treasury and is laid before the House of Commons by Command of Her Majesty.

2. Purpose of the instrument

2.1 When supplies of digital services, such as mobile phone apps, e-books or music downloads, are provided to consumers in the European Union (EU) Value Added Tax (VAT) has to be accounted for in the country where the consumer is based regardless of the value of the sale. This means that businesses have to register for and pay VAT in each EU country in which they make these sales. This Order will allow a United Kingdom (UK) business making digital sales of less than £8,818 to consumers in other EU countries to have those sales treated as being made in the UK and subject to the UK VAT rules.

3. Matters of special interest to Parliament

Matters of special interest to the Select Committee on Statutory Instruments

3.1 None.

Matters relevant to Standing Orders Nos. 83P and 83T of the Standing Orders of the House of Commons relating to Public Business (English Votes for English Laws)

3.2 The territorial application of this instrument includes Scotland and Northern Ireland.

3.3 The powers under which this instrument is made cover the entire United Kingdom (see section 101 of the Value Added Tax Act 1994) and the territorial application of this instrument is not limited either by the Act or by the instrument.

4. Extent and Territorial Application

4.1 The territorial extent of this instrument is the United Kingdom.

4.2 The territorial application of this instrument is the United Kingdom.

5. European Convention on Human Rights

5.1 Mel Stride MP, Financial Secretary to the Treasury, has made the following statement regarding Human Rights:

'In my view the provisions of the Value Added Tax (Place of Supply of Services) (Supplies of Electronic, Telecommunication and Broadcasting services) Order 2018 are compatible with the Convention rights.'

6. Legislative Context

6.1 The Principal VAT Directive (Council Directive 2006/112/EC; "the PVD") provides that VAT on cross-border digital sales to EU consumers has to be accounted for in the country where the consumer is based. This means that businesses have to register with the VAT authorities in each country where they make digital sales.

6.2 Council Directive 2017/2455/EU ("the 2017 Directive") makes amendments that will change the place of supply for businesses established in the EU. Where a business makes cross-border supplies of digital services to consumers based in the EU and the value of these is less than €10,000, or the equivalent in national currency (£8,818), in the current and preceding calendar year, the place of supply will be determined by where the business is based.

6.3 The 2017 Directive requires that the corresponding value in national currency is calculated by applying the exchange rate published by the European Central Bank at on the date the directive was adopted (5 December 2017). This converts the €10,000 into £8,818.

6.4 A business may still elect for the current rules to apply and treat the supply as being made in the country in which the consumer belongs. If they choose to do so supplies will be treated in this way for the next two calendar years.

6.5 The changes in Council Directive 2017/2455 take effect in stages. This instrument implements amendments made to Article 58 of the PVD and makes provision for the making and duration of the election, and takes effect from 1 January 2019.

6.6 The 2017 Directive also amends Article 219a of the PVD, with effect from 1 January 2019. This Article provides the rules for VAT invoicing. With effect from 1 January 2019 businesses using MOSS will apply the rules according to the member state in which they are registered for MOSS. No legislation is required to bring in this change as our rules already achieve the required result as supplies made to consumers do not require a VAT invoice.

6.7 The 2017 Directive also amends Articles 358a and Article 361(1) of the PVD, with effect from 1 January 2019. These Articles remove the restrictions on non-EU businesses joining the VAT MOSS (Mini One Stop Shop) Non-Union scheme. These amendments are implemented by the Value Added Tax (Special Accounting Schemes) (Supplies of Electronic, Telecommunication and Broadcasting Services) Order 2018.

7. Policy background

What is being done and why?

7.1 On 23 June 2016, the EU referendum took place and the people of the United Kingdom voted to leave the European Union. Until the UK formally exits, the UK remains a full member of the European Union and all the rights and obligations of EU membership remain in force. During this period the Government will continue to negotiate, implement and apply EU legislation. The outcome of these negotiations will determine what arrangements apply in relation to EU legislation in future once the UK has left the EU.

7.2 From 1 January 2015 businesses making digital sales to consumers in other EU member states have had to account for VAT in the country where the customer is

based. This reflects that VAT is a tax on consumption and should be paid in the country where the service is used.

7.3 On 5 December 2017 EU Finance Ministers agreed a number of changes to further simplify the obligations for businesses making digital sales in the EU. This Order implements one of those changes. If a UK business makes cross-border digital sales to consumers in other EU countries those sales will be treated as being made in the UK provided the value of these is less than £8,818 in the current and preceding calendar year. A practical consequence of this is if the business's taxable supplies are less than the UK registration threshold it may not have to pay VAT at all.

7.4 Approximately 1200 UK businesses fall below the £8,818 threshold.

7.5 A business may still notify HMRC of their choice to continue to apply the current rules which treat the supply as being made in the country in which the consumer belongs. If they choose to do so, supplies will be treated in this way for the next two calendar years.

8. European Union (Withdrawal) Act/Withdrawal of the United Kingdom from the European Union

8.1 This instrument does not relate to withdrawal from the European Union.

9. Consolidation

9.1 There is no current plan to consolidate the Value Added Tax Act 1994.

10. Consultation outcome

10.1 The European Commission held a consultation between February 2015 and July 2016 on modernising VAT for cross-border e-commerce. The consultation assessed the implementation of the 2015 changes to the place of supply rules for business to consumer supplies of digital services and the MOSS scheme. A summary of the consultation is included in annex 2 of the Commission's impact assessment.

https://ec.europa.eu/taxation_customs/sites/taxation/files/swd_2016_379.pdf

10.2 The need to introduce a cross-border threshold to facilitate small business was a common theme within the responses to the public consultation.

10.3 A four week consultation on the draft Order was published by HMRC on 11 September 2018. A single response was received and as a result a minor typographical correction was made to the draft Order. A question was also raised regarding the conversion to a Sterling equivalent. The EU directive sets out how the UK should convert the Euro equivalent to national currency. The threshold being in Sterling is consistent with the approach to MOSS declarations in the UK which are also made in Sterling.

11. Guidance

11.1 Existing guidance is being updated and will be published at the same time as this instrument.

https://www.gov.uk/guidance/vat-how-to-work-out-your-place-of-supply-of-services#broadcasting-telecommunications-and-e-services

12. Impact

12.1 The impact on business, charities or voluntary bodies is expected to be a negligible.

12.2 There is no significant impact on the public sector.

12.3 There will be a one-off impact at first as businesses become familiar with the new rules. This order is then expected to have an ongoing positive impact on businesses who make sales of digital services across the EU. The measure will reduce business administrative burdens. On-going savings estimated at around £260 per annum per business will result from the affected businesses no longer being required to register for VAT and submit VAT returns.

12.4 This measure is expected to have a positive impact on approximately 1200 UK businesses that fall below the £8,818 threshold, as all their supplies of digital services (including those to other EU member states) will now be treated as being made in the UK.

12.5 A Tax Information and Impact Note covering this instrument was published on 11 September 2018 alongside a draft of The Value Added Tax (Place of Supply of Services) (Supplies of Electronic, Telecommunication and Broadcasting Services) Order 2018 and is available on the website at https://www.gov.uk/government/publications/vat-changes-to-the-supply-of-digital-services-2019.

It remains an accurate summary of the impacts that apply to this instrument

13. Regulating small business

13.1 The legislation applies to activities that are undertaken by small businesses.

13.2 No specific action is proposed to minimise regulatory burdens on small businesses.

13.3 The basis for the final decision on what action to take to assist small businesses is that this change reduces the administrative burdens placed on a proportion of small businesses

14. Monitoring & review

14.1 The approach to monitoring of this legislation is to use statistics collected by VAT returns and receipts.

14.2 The Order does not include a statutory review clause and, in line with the requirements of the Small Business, Enterprise and Employment Act 2015 under section 28(3)(a) a review clause is not required as the Order makes or amends provisions relating to a tax.

15. Contact

15.1 Marie Williams at HM Revenue and Customs Telephone: 03000 543187 or email: marie.williams@hmrc.gsi.gov.uk can be contacted with any queries regarding the instrument.

15.2 Eileen Patching at HM Revenue and Customs can confirm that this Explanatory Memorandum meets the required standard.

15.3 Mel Stride, Financial Secretary to the Treasury can confirm that this Explanatory Memorandum meets the required standard.